plaintiff, there were effectively disposed of as errors in arithmetic, matters which the Court is entitled to take into account. The one exception is the defendant's claim that he is not credited with a payment for a dollar stamp. Now that objection the plaintiff company, although they attempted to do so, lamentably failed to dispose of in its entirety. They disposed of it in part by pointing out as a matter of law the stamp in question would cost 50 cents and not $1 but entirely failed to dispose of the defendant's allegation that the expenditure had been incurred. Their only answer was that they were unable to trace the item and, of course, for the purposes of an Order XIV case that is insufficient.

These things drive me to the conclusion that judgment was wrongly entered for the plaintiff company for the sum of $59,528.67 because that was in excess of the amount covered by the defendant's admission. In my view the amount should have been $59,528.17. That however brings to mind the maxim *De minimis non curat lex.* For myself, therefore, I would, subject to an amendment of 50 cents in the amount in the judgment, dismiss the appeal with costs.

Barakbah C.J. (Malaya) and **Wylie C.J. (Borneo)** concurred.

Appeal dismissed.

Solicitors: *Donaldson & Burkinshaw; P. T. Wong & Co.*

TAY SEOW HUAH v. LEE CHAN CHIN & ANOR.

[F.C. (Thomson L.P., Barakbah C.J. (Malaya) & Wee Chong Jin C.J. (Singapore)) October 14, 1963]

[Singapore — Federal Court Civil Appeal No. 39 of 1963]

Damages—Fatal accident—Dependency—Value of—Civil Law Ordinance (Cap. 24), ss. 7 and 12.

A woman bread seller lost her life in a running-down case. She left behind her husband and five children, the eldest a girl aged 19 and the youngest a boy aged 8. Sometime after her death but prior to the trial the husband died. Since her death the selling of bread had been carried on by members of her family. In the Court below judgment was entered under section 7 for $2,500 and under section 12 for $13,000, the trial Judge holding that the value of the dependency was $150 to $200 per month. On appeal against quantum of damages,

Held: (1) due to her death the members of her family were required to devote time which might be gainfully employed in other ways in doing what their deceased mother did and to that extent they had suffered loss;

(2) calculations based on the ages of the children and of the period during which they would be entitled to look to their mother for support (accepting $200 as the contribution she was making to their support) add up to $14,500 which was not very different from the learned trial Judge's figure of $13,000 and therefore the appeal should be dismissed.

FEDERAL COURT.

J. D. Donnelly for the appellant.

N. A. Christopher for the respondent.

Thomson L.P. (delivering oral judgment): This is an appeal from a judgment of Mr. Justice Buttrose in a running-down case of the usual type where an unfortunate woman lost her life.

She left behind her five children, a girl aged 19, a boy aged 15, a boy aged 13, a boy aged 10 and a boy aged 8. Sometime after her death but prior to the trial of the action the father died.

In the event judgment was entered under section 7 and section 12 of the Civil Law Ordinance. $2,500 was awarded under section 7 for loss of expectation of life which would go to the estate and $13,000 was awarded under section 12 to the children for loss of support.

The judgment is now appealed against but the appeal is confined to the quantum of damages.

In the first place it is said that in assessing the damages the trial Judge failed to make allowance as regards the question of dependency for the sum of $2,500 awarded for loss of expectation of life. To my mind that argument is without substance. In the first place there is nothing to show that the trial Judge disregarded the point, although it is true he does not mention it. And in the second place, if he did disregard it and if we were to regard it now, we should also have to take into account the fact that immediately prior to her death the deceased woman owed $1,600. That, of course, was a first charge against the damages for loss of expectation of life and would have the effect of reducing the gain to each of the individual dependants by way of accelerated succession to something very trifling.

As regards the award of $13,000 for loss of support, the evidence is that prior to her death this woman was selling bread. I am not saying she was carrying on business. I do not say she was employing herself in business. I just say she was selling bread and she made a profit of some $400 a month. The selling of bread has been carried on since her death not by her but by members of her family. In other words, they are required to devote time which might be gainfully employed in other ways in doing what their deceased mother did and to that extent they have suffered loss.

The question of the quantification of that loss at first sight presents some difficulty. The trial Judge does not give any indication of how he arrived at the figure of $13,000. He did, however, come to the conclusion, which seems a reasonable one on the evidence, that the value of the dependency was between $150 and $200 a month. I have done some calculations myself based on the ages of the children and on my view

of the period during which they would be entitled to look to their mother for support and accepting the Judge's figure of $200 the contribution she was making to their support and I find these figures add up to $14,500 which is not very different from the Judge's figure of $13,000.

In the circumstances I have come to the conclusion that the appeal is without substance and should be dismissed.

Barakbah C.J. (Malaya) and **Wee Chong Jin C.J. (Singapore)** concurred.

Appeal dismissed.

Solicitors: *Battenberg & Talma; N. A. Christopher.*

KHALID PANJANG & ORS. v. PUBLIC PROSECUTOR

[F.C. (Thomson L.P., Barakbah C.J. (Malaya) & Tan Ah Tah J.) November 11, 1963]

[K.L. — Federal Court Criminal Appeal No. 6 of 1963]

Criminal Procedure—Trial—Commencement of—Mode of—By jury or Judge alone—Criterion—Criminal Procedure Code (F.M.S. Cap. 6), ss. 200, 210 and 225 to 234.

At some stage prior to the commencement of a trial in the High Court the question of the mode of trial must be decided, i.e. whether it is to be by jury or by a Judge alone. The criterion, contained in section 200 of the Criminal Procedure Code is that "in all cases where the punishment of death is authorised by law the accused shall be tried by jury." The only practicable time at which the criterion is to be applied is the commencement of the trial.

Once a trial has been commenced before a jury it can only be terminated, apart from questions of irregularity and so forth, by a verdict of the jury which must be either that the accused person is guilty or not guilty of either the offence with which he was originally charged or any other offences for which he could be convicted on the original charge by reason of the provisions of the Code as a whole.

Cases referred to:—

(1) *Lee Chee Wan & Ors.* v. *Public Prosecutor* [1961] M.L.J. 62.

(2) *R.* v. *Jones* [1918] 1 K.B. 416.

(3) *Lee Ah Cheong* v. *R.* [1958] M.L.J. 242.

FEDERAL COURT.

D. R. Seenivasagam for the 1st and 3rd appellants.

E. K. Yeap for the 2nd appellant.

S. A. Raj for the 4th appellant.

Mohamed bin Yaacob (Deputy Public Prosecutor) for the respondent.

Thomson L.P. (delivering oral judgment on preliminary point): It is quite clear that at some stage prior to the commencement of a trial in the High Court the question of the mode of trial must be decided, that is to say whether it is to be by jury or by a Judge alone. The criterion is that contained in section 200 of the Criminal Procedure Code:—

> "In all cases where the punishment of death is authorised by law the accused shall be tried by jury."

That is the criterion and regarding the question of the time at which that criterion is to be applied we are of the opinion that, having regard to the provisions of the Code as a whole, the only practicable time that could have been contemplated by the legislature is the commencement of the trial.

I pause here to say that we see no reason whatsoever to depart from anything I said in the case of *Lee Chee Wan & Ors.* v. *Public Prosecutor* [1] that a trial by jury for two capital offences together with a non-capital offence is a nullity. That, however, is to be read in the light of what has just been said, that in our opinion the time at which the criterion is to be applied is the commencement of the trial.

If the criterion be applied as in the present case where there is one charge and one charge only — a charge of murder — it requires that the trial be by jury. And turning to Chapter XXII which deals with trials by jury before the Court of a Judge, and in particular to section 210 and sections 225 to 234, it is clear that once the trial has been commenced before a jury it can only be terminated, apart from questions of irregularity and so forth, by a verdict of the jury which must be either that the accused person is guilty or not guilty of either the offence with which he was originally charged or any other offence for which he could be convicted on the original charge by reason of the provisions of the Code as a whole.

In these circumstances and for these reasons we are of the opinion that what was done in the present case was not legally wrong. We would add, however, and we do hope that what we say will be listened to (and perhaps here it would be more appropriate to express a wish than a hope) that as regards the second appellant although what was done was legally correct it was something that was undesirable.

In the case of *The King* v. *Jones* [2] where an appellant was convicted on an indictment which contained counts for murder and also for robbery with violence, the Court of Criminal Appeal though dismissing the appeal against conviction for murder observed (*per* Lawrence J.):—

> "in a case of murder the indictment ought not to contain a count of such a character as robbery with violence. The charge of murder is too serious a matter to be complicated by having alternative counts inserted in the indictment."

Much the same thing was said by the Court of Criminal Appeal in Singapore in the case of *Lee Ah Cheong* v. *Queen.* [3]